Advance Synergy Capital Sdn Bhd (formerly known as Advance Synergy Capital Bhd) v The Minister of Finance, Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(IM)-56 OF 2011
LOW HOP BING, SYED AHMAD HELMY AND APANDI ALI JJCA
11 APRIL 2011

Civil Procedure — Intervention — Application for — Leave stage — Whether parties other than putative respondent can be granted leave to intervene as respondent at leave stage — Conditions to be fulfilled — Rules of the High Court 1980 O 53 r 8(1)

The appellant, Advance Synergy Capital Sdn Bhd ('ASC') appealed against the order of the High Court granting leave to ACE INA International Holdings Ltd ('ACE') to intervene as the second respondent at the threshold stage of ASC's application for judicial review. ASC and ACE owned 49% and 51% respectively of the entire issued and paid-up capital in Advance Synergy Insurance Bhd ('ASIB'). Pursuant to an agreement, ACE was granted a call option to purchase ASC's 49% of the issued and paid-up share in ASIB ('the option shares'). The execution of the transaction was subject to the prior approval of the Minister of Finance acting on the recommendation of the Central Bank ('Bank Negara') under the Insurance Act 1996 ('the MOF approval'). ACE submitted its application to Bank Negara for the MOF approval which was granted. Pursuant to the MOF approval, ACE requested ASC to execute the sale and purchase agreement and other relevant documents to complete the acquisition of the option shares, but ASC declined to do so. ASC then commenced judicial review proceedings before the High Court, seeking an order of certiorari to quash the MOF approval. At the leave stage of the judicial review proceedings, ACE made an application for leave to intervene as the second respondent. The High Court allowed ACE's application and ACE was added as the second respondent. Hence this appeal by ASC. Counsel for ASC submitted that at the leave stage of the judicial review proceedings, only the attorney general and the putative respondent can be heard. It was submitted that under O 53 r 8(1) of the Rules of the High Court 1980 ('RHC'), ACE could only be heard at the judicial review proceedings after leave has been granted.

Held, dismissing the appeal:

(1) There is no plausible reason to exclude a proper party or person to be granted leave to intervene as a respondent at the leave stage. In such

circumstances, inclusivity rather than exclusivity should be the norm, so as to ensure fairness to the party who has a direct interest in the matter. In addition, O 53 r 8(1) of the RHC confers upon the judge a wide discretion to hear a proper party or person in opposition to an 'application for judicial review' so long as the conditions contained therein have been fulfilled, viz: (i) the person desires to be heard in opposition to the application; and (ii) that person appears to the judge to be a proper person to be heard, notwithstanding that he has not been served with the cause papers in the matter (see paras 25–26).

(2) The second respondent was the recipient of the MOF approval which was now being challenged by way of judicial review. The second respondent was directly involved in the MOF approval and would be directly affected by the outcome of the judicial review proceedings. The second respondent clearly had a direct interest in the outcome of ASC's application for leave at the threshold stage, and so ought to be added as a party to the proceedings. In the context herein, justice and fairness dictated the necessary inclusion of the second respondent as a party to canvass their opposition on a subject matter directly affecting their interest. Order 53 r 8(1) could therefore be invoked to allow the second respondent to appear as a proper party to oppose ASC's application at the leave stage (see para 28).

[Bahasa Malaysia summary

Perayu, Advance Synergy Capital Sdn Bhd ('ASC') merayu terhadap perintah Mahkamah Tinggi memberikan kebenaran kepada ACE INA International Holdings Ltd ('ACE') untuk campur tangan sebagai responden kedua di peringkat ambang permohonan untuk semakan kehakiman oleh ASC. ASC dan ACE masing-masing memiliki 49% dan 51% keseluruhan modal terbitan dan berbayar di dalam Advance Synergy Insurance Bhd ('ASIB'). Berikutan satu perjanjian, ACE diberikan pilihan untuk membeli 49% saham terbitan dan berbayar di dalam ASIB ('saham pilihan'). Penandatanganan transaksi tersebut tertakluk kepada kelulusan awal daripada Menteri Kewangan yang bertindak atas saranan Bank Negara di bawah Akta Insurans 1996 ('kelulusan Menteri'). ACE mengemukakan permohonannya kepada Bank Negara untuk kelulusan Menteri yang telah diberikan. Berikutan kelulusan Menteri, ACE memohon supaya ASC menandatangani perjanjian jual beli dan dokumen-dokumen lain yang relevan untuk menyempurnakan pemerolehan saham pilihan, tetapi ASC enggan berbuat demikian. ASC kemudian memulakan prosiding semakan kehakiman di Mahkamah Tinggi memohon perintah certiorari untuk membatalkan kelulusan Menteri. Di peringkat kebenaran prosiding semakan kehakiman, ACE memohon untuk kebenaran untuk campur tangan sebagai responden kedua. Mahkamah Tinggi membenarkan permohonan ACE dan ACE ditambah sebagai responden kedua. Maka rayuan ini oleh ASC. Peguam ASC menghujah bahawa di

peringkat kebenaran prosiding semakan kehakiman, hanya peguam negara dan orang yang dianggap responden boleh didengar. Dihujahkan bahawa di bawah A 53 k 8(1) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), ACE hanya boleh didengar semasa prosiding semakan kehakiman selepas kebenaran diberikan.

Diputuskan, menolak rayuan:

(1) Tidak ada alasan yang munasabah untuk mengetepikan pihak orang yang sepatutnya diberikan kebenaran untuk campur tangan sebagai responden di peringkat kebenaran. Dalam keadaan tersebut, kemasukan dan bukan pengetepian yang menjadi norma, untuk memastikan keadilan kepada pihak yang mempunyai kepentingan terus di dalam perkara tersebut. Tambahan, A 53 k 8(1) KMT memberikan kepada hakim, budi bicara yang luas untuk mendengar pihak atau orang yang sewajarnya menentang untuk 'application for judicial review' asalkan syarat-syarat yang terkandung di dalamnya dipenuhi, iaitu: (i) orang itu ingin didengar menentang permohonan tersebut; dan (ii) orang itu dilihat oleh hakim sebagai orang yang wajar didengar, tidak kira walaupun kertas-kertas kausa di dalam perkara tersebut tidak diserahkan kepadanya (lihat perenggan).

(2) Responden kedua adalah penerima kelulusan Menteri yang kini dicabar secara semakan kehakiman. Responden kedua terlibat secara langsung di dalam kelulusan Menteri dan akan terjejas secara langsung oleh keputusan prosiding semakan kehakiman tersebut. Responden kedua jelas mempunyai kepentingan secara langsung di dalam keputusan permohonan ASC untuk kebenaran di peringkat ambang, dan dengan itu harus ditambah sebagai pihak kepada prosiding tersebut. Di dalam konteks ini, keadilan dan kesaksamaan menyatakan keperluan memasukkan responden kedua sebagai pihak untuk menyatakan tentangan mereka terhadap subjek perkara yang menjejaskan kepentingan mereka secara langsung. Aturan 53 k 8(1) oleh itu boleh dibangkitkan untuk membenarkan responden kedua dilihat sebagai pihak yang wajar untuk menentang permohonan ASC di peringkat kebenaran (lihat perenggan).]

Notes

For cases on application for, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 4089–4091.

Cases referred to

Bursa Malaysia Securities Bhd v Gan Boon Aun [2009] 4 MLJ 695; [2009] 5 CLJ 698, CA (refd)

Caswell and another v Dairy Produce Quota Tribunal For England and Wales [1990] 2 All ER 434, HL (refd)

A *Chin Mee Keong v Pesuruhjaya Sukan* [2007] 6 MLJ 193 ; [2007] 5 CLJ 363, CA (refd)

George John v Goh Eng Wah Bros Film Sdn Bhd & 2 Ors [1988] 1 MLJ 319 (refd)

Inland Revenue Commissioners v National Federation of Self Employed and Small Business Ltd [1982] AC 617, HL (refd)

B

Kanawagi a/l Seperumaniam v Dato' Abdul Hamid Mohamad [2004] 5 MLJ 495, HL (refd)

Majlis Agama Islam Selangor v Bong Boon Chuen & Ors [2009] 6 MLJ 307, FC (refd)

C

Mohamed Nordin bin Johan v Attorney-General, Malaysia [1983] 1 MLJ 68; [1983] 1 CLJ 130, FC (refd)

R v Camden London Borough Council, Ex Parte Martin [1997] 1 All ER 307 (refd)

D *R v Secretary of State for the Home Department, Ex Parte Rukshanda Begum* [1990] Crown Office Digest 109, DIP, CA (refd)

R v Stratford-on-Avon District Council and another, ex parte Jackson [1985] 3 All ER 769, CA (refd)

E *Ta Wu Realty Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri & Anor* [2004] 6 MLJ 53; [2004] 6 CLJ 398, HC (refd)

Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors [2006] 5 MLJ 60; [2006] 1 CLJ 927, CA (refd)

F *Tuan Hj Sarip Hamid & Anor v Patco Malaysia Berhad* [1995] 2 MLJ 442; [1995] 3 CLJ 627, SC (refd)

Legislation referred to

Arbitration Act 2005 s 10

Insurance Act 1996 s 67

G

Rules of the High Court 1980 O 53, O 53 rr 3, 3(1), 3(3), 3(6), 4(1), 4(2), 8(1), Form IIIB

Rules of the Supreme Court [UK] O 53 r 4(1)

Supreme Court Act 1981 [UK] ss 31(6), (7)

H

Appeal from: Application for Judicial Review No Rs-25–469 of 2010 (High Court, Kuala Lumpur)

Harpal Singh Grewal (Teh Boon Eng with him) (Teh & Associates) for the appellant.

I

Noor Hisham bin Ismail (Senior Federal Counsel, Attorney General's Chambers) for the first respondent.

Cyrus Das (Wong Wye Wah with him) (Kadir Andri & Partners) for the second respondent.

Low Hop Bing JCA (delivering judgment of the court):

APPEAL

[1] This is an appeal by the appellant Advance Synergy Capital Sdn Bhd ('ASC') against the order of the Kuala Lumpur High Court dated 14 January 2011 granting leave to ACE INA International Holdings Ltd ('ACE') to intervene as the second respondent at the threshold stage of ASC's application for judicial review.

[2] We now give our grounds for dismissing ASC's appeal.

FACTUAL BACKGROUND

[3] ASC and ACE own 49% and 51% respectively of the entire issued and paid-up capital in Advance Synergy Insurance Bhd ('ASIB').

[4] Pursuant to an agreement dated 12 August 2008 (as amended by a letter dated 20 August 2008) and the amended and restated shareholders agreement ('the ARSA') dated 1 January 2009 entered into between three parties viz ASC, ACE and Advance Synergy Bhd, ACE was granted a Call Option to purchase ASC's 49% of the issued and paid-up share in ASIB ('the Option Shares'), subject to the terms and conditions of the draft sale and purchase agreement ('the SPA') set out in Schedule 1 to the ARSA. The parties further agreed that the execution of the SPA is subject to the prior approval of the Minister of Finance acting on the recommendation of the Central Bank ('Bank Negara') under the Insurance Act 1996 ('the MOF approval').

[5] Prior to the ARSA, ACE had vide Bank Negara's letter dated 28 August 2007 obtained 'in principle' approval consistent with circular JPI:27/1998 entitled 'Acquisition or Disposal of Interest in Shares of an Insurer'.

[6] ACE exercised the call option on 4 February 2009 and notified ASC on 10 February 2009.

[7] In anticipation of the exercise of the call option and as envisaged in cl 6.01 of the ARSA, vide letter dated 3 February 2009, ACE requested ASC to give its consent to ACE's application for the MOF Approval under s 67 of the Insurance Act 1996 ('s 67'). ASC failed to accede to ACE's request, but had instead sought to delay and/or thwart ACE's application.

[8] ACE then initiated High Court Originating Summons No

D-24NCC-72 of 2009, seeking a mandatory order to compel ASC to forthwith give its written consent and provide documents and information to Bank Negara and/or the Minister of Finance in respect of ACE's application for the MOF Approval required under s 67 ('the first OS proceedings'). ASC made an application to stay the first OS Proceedings pursuant to s 10 of the Arbitration Act 2005 ('the stay application') pending reference to arbitration. This stay application was heard and dismissed by the High Court on 5 April 2010. The first OS was heard and allowed on 12 May 2010. ASC then gave its letter of consent on 21 May 2010.

[9] On 26 May 2010, ACE submitted its application to Bank Negara for the MOF Approval which was granted on 9 September 2010.

[10] Pursuant to the MOF Approval and the terms of the ARSA, ACE via its solicitors requested ASC to execute the SPA and other relevant documents to complete the acquisition of the option shares, but ASC declined to do so. ACE then initiated High Court Originating Summons No D-24NCC-332 of 2010 ('the second OS proceedings'), seeking various orders to compel ASC to give effect to the acquisition of the option shares. ACE obtained an order in terms of the second OS.

[11] On 18 October 2010, ASC commenced the judicial review proceedings before the High Court, seeking an order of certiorari to quash the MOF approval. At the leave stage of the judicial review proceedings, ACE made an application for leave to intervene as the second respondent. The High Court allowed ACE's application. ACE has since been added as the second respondent.

[12] Hence, the instant appeal by ASC.

LEAVE TO INTERVENE

[13] Dato' Harpal Singh Grewal (assisted by Mr Teh Boon Eng) learned counsel for ASC subscribed to the view that at the leave stage of the judicial review proceedings, only the attorney general (in the case of an application touching on public interest) and the putative respondent can be heard. They advocated that under O 53 r 8(1) of the Rules of the High Court 1980, ACE could only be heard at the judicial review proceedings after leave has been granted. (For brevity and convenience, a reference hereinafter to an Order and a rule is a reference to that order and rule in the Rules of the High Court 1980)

[14] Dato' Dr Cyrus Das (Mr Wong Wye Wah with him) stressed that at the leave stage of the judicial review proceedings, ACE being the recipient of the MOF approval would be directly affected by the outcome of the challenge by

ASC to the MOF approval in the judicial review proceedings and so ACE is a proper person to be heard. They added that ACE has been correctly granted leave to intervene as the second respondent at the threshold stage.

[15] The question which we have to answer may be formulated as follows:

> On the basis of the above factual background, and upon a true construction of O 53 r 8(1), was the High Court correct in granting ACE leave to intervene as the second respondent at the leave stage of ASC's application for judicial review to challenge the MOF approval?

[16] The answer to the above question would perforce include a detailed discussion of:

(a) the two stages of judicial review proceedings under O 53;

(b) attorney general's locus standi and the putative respondent's position at the leave stage of an application for judicial review under O 53 r 3; and

(c) the ambit of the words 'an application for judicial review' in O 53 r 8(1).

TWO STAGES UNDER O 53

[17] It is trite procedural law that judicial review proceedings under O 53 consists of two stages. The first stage, set out in O 53 r 3(1), necessitates the obtaining of leave, as 'No application under this Order shall be made unless leave therefor has been granted in accordance with this rule'. At this threshold stage, the grant or refusal of leave is considered. The second stage is regulated by O 53 r 4(1) and (2), concerning the substantive application for judicial review after leave has been granted. Under O 53 r 4(1), the substantive applicant is required to file a notice in Form IIIB. Under O 53 r 4(2), upon extraction of the sealed copy of Form IIIB, the applicant must serve a copy thereof together with a copy of the statement and all affidavits in support on all persons directly affected by the application not later than 14 days before the date of hearing specified therein. In a minority judgment in *Chin Mee Keong v Pesuruhjaya Sukan* [2007] 6 MLJ 193 ; [2007] 5 CLJ 363 (CA) at paras 56–58, I took the opportunity to explain this position of two stages under O.53. A similar sentiment was shown in the separate majority judgments of James Foong JCA (now FCJ) at pp 382 and 383 in [25] to [28] and of Suriyadi Halim Omar JCA in p 401 in [92]. (See also *George John v Goh Eng Wah Bros Film Sdn Bhd & 2 Ors* [1988] 1 MLJ 319 per Lim Beng Choon J (as he then was); *Mohamed Nordin bin Johan v Attorney-General, Malaysia* [1983] 1 MLJ 68; [1983] 1 CLJ 130; [1983] CLJ (Rep) 271 per Raja Azlan Shah Ag LP (now HRH the Sultan of Perak); and *Bursa Malaysia Securities Bhd v Gan Boon Aun* [2009] 4 MLJ 695 paras 21–22, at pp 710–711,; [2009] 5 CLJ 698 (CA), paras [21] and [22] at p 715–716 per Heliliah Mohd Yusof JCA (later FCJ)).

ATTORNEY GENERAL AND THE PUTATIVE RESPONDENT AT THRESHOLD STAGE

[18] For the purposes of the threshold stage, the provisions of O 53 r 3 are relevant and merit reproduction as follows:

(1) (Referred to in *[17]* above).

(2) An *application for leave* must be made ex parte to a Judge in Chambers and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits verifying the facts relied on.

(3) The applicant must give notice of the *application for leave* not later than three days before the hearing date to the Attorney General's Chambers and must at the same time lodge in those Chambers copies of the statement and affidavits.

(4) The Judge may, in granting leave, impose such terms as to costs and as to the giving of security as he thinks fit.

(5) The grant of leave under this rule shall not, unless the Judge so directs, operate as a stay of the proceedings in question.

(6) An *application for judicial review* shall be made promptly and in any event within 40 days from the date when grounds for the *application* first arose or when the decision is first communicated to the applicant provided that the Court may, upon *application* and if it considers that there is a good reason for doing so, extend the period of 40 days. (Emphasis added.)

[19] It is abundantly clear to us that the whole of O 53 r 3 deals with the requirement for leave at the threshold stage. The word 'application' appearing in O 53 r 3(6) must therefore construed as referring to the threshold stage only. In *R v Stratford-on-Avon District Council and another, ex parte Jackson* [1985] 3 All ER 769 (CA), one of the questions which the (UK) Court of Appeal has to answer was whether the time limit of three months in O 53 r 4(1) (UK) (40 days in our O 53 r 3(6)) referred to the leave application at the threshold stage or the substantive motion. Ackner LJ who spoke for the (UK) Court of Appeal held at p 772a-c that in practice the (UK) courts treated it as the application for leave. His Lordship considered this as the only possible course from a practical point of view and the only sensible construction which can be given to the rule, as it is not possible for an applicant to launch his substantive application for relief until the court has been able to dispose of his application for leave. That view was approved by the House of Lords in *Caswell and another v Dairy Produce Quota Tribunal For England and Wales* [1990] 2 All ER 434, 439b where Lord Goff delivered the speech for the House and held that the words 'an application for judicial review' in ss 31(6) and (7) of the Supreme Court Act 1981 (UK) must be read as referring, where appropriate, to an application for leave to apply for judicial review.

[20] Under our O 53 r 3(3), at the threshold stage, the applicant must give notice of the application for leave not less than three days before the hearing date to the attorney general's chambers and must at the same time lodge in those chambers copies of the statement and affidavits. That being the case, the attorney general has the locus standi to appear at the threshold stage of an application for judicial review: See eg *Kanawagi a/l Seperumaniam v Dato' Abdul Hamid Mohamad* [2004] 5 MLJ 495 (HC) per Faiza Tamby Chik J (as he then was) at p 500 [4].

[21] On the other hand, the judge may, at the ex parte leave stage, invite the putative respondent to attend and make representations as to whether or not leave should be granted. Such invitation is normally extended where, on considering the papers, the judge comes to the conclusion that he really does not know whether there is or is not an arguable case: *R v Secretary of State for the Home Department, ex parte Rukshanda Begum* [1990] Crown Office Digest 109, DIP, CA (UK) per Lord Donaldson MR, as applied by the (then) Supreme Court in *Tuan Haji Sarip Hamid & Anor v Patco Malaysia Berhad* [1995] 2 MLJ 442; [1995] 3 CLJ 627, at p 633 per Edgar Joseph JR FCJ (as he then was). However, the putative respondent is not entitled as a matter of right to appear and demand to be heard: *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60; [2006] 1 CLJ 927 at p 945 [14] per Zaleha Zahari JCA (delivering a dissenting judgment) (see also my judgment given in the High Court in *Ta Wu Realty Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri & Anor* [2004] 6 MLJ 53; [2004] 6 CLJ 398 (HC) at p [18]; *R v Camden London Borough Council, ex parte Martin* [1997] 1 All ER 307; *Inland Revenue Commissioners v National Federation of Self-Employed and Small Business Ltd* [1982] AC 617 (HL), at p 642, Lord Diplock; and Michael Supperstone QC and James Goudie QC in 'Judicial Review' (1997) at pp 16.4 and 16.6 – 16.7.)

AMBIT OF 'APPLICATION FOR JUDICIAL REVIEW' IN O 53 R 8(1)

[22] Having considered and determined the attorney general's locus standi and the invitation that the judge may extend to a putative respondent to be heard at the leave stage, it is now appropriate for us to decide whether other parties or persons may be heard at the threshold stage in opposition to the application for judicial review. Order 53 r 8(1) may throw some light on this. It reads:

> Other persons who may be heard (O 53, r 8)
>
> 8(1) Upon the hearing of an *application for judicial review*, any person who desires to be heard in opposition to the application and appears to the Judge to be a proper person to be heard may be heard notwithstanding that he has not been served with the cause papers in the matter.(Emphasis added.)

[23] In *Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* [2009] 6 MLJ 307 (FC), Zulkefli FCJ explained at p 319 [26] that a proper person or party who has a direct interest may be joined as a party. The well considered judgment of His Lordship refers to the 'joinder as a party in judicial review' proceedings. However, the parties before the Federal Court did not address the question of whether the 'judicial review' proceedings refer to the two stages or to one stage only ie either the threshold stage or the substantive stage.

[24] Hence, it is our bounden duty to provide an answer. In our view, the resolution thereto depends on the true construction to be placed on the expression 'application for judicial review' in O 53 r 8(1). The precise meaning of this expression may be crystallised by a careful consideration of the word 'application'. This word is to be construed by reference to the maxim noscitur a sociis and in such a manner as to take colour and precision from the context in which it appears or is used in O 53. It is or will be known from its associates.

[25] First of all, it is noteworthy that O 53 is captioned 'Application For Judicial Review'. The word 'application' in this caption would cumulatively cover the two stages ie the leave application at the threshold stage as well as the substantive stage after leave has been granted. Similarly, the expression 'an application for judicial review' in O 53 rr 8(1) and (2) would also include the two stages which are the essential characteristics prevailing in an application for judicial review. Leave at the threshold stage is a sine qua non to the judicial review proceedings, as the absence of leave would inevitably render the particular judicial review proceedings incomplete and inchoate. By no stretch of imagination can the essential requirement for leave be jettisoned or truncated to leapfrog to the substantive motion. In our view, the submission presented for ASC that leave may be granted to ACE to intervene at the substantive application for judicial review should also apply equally to the threshold stage as well. There is no plausible reason to exclude a proper party or person to be granted leave to intervene as a respondent at the leave stage. In such circumstances, inclusivity rather than exclusivity should be the norm, so as to ensure fairness to the party who has a direct interest in the matter (I am grateful to my learned brother *Mohamed Apandi bin Ali JCA* for this input).

[26] In addition, O 53 r 8(1) confers upon the judge a wide discretion to hear a proper party or person in opposition to an application for judicial review' so long as the conditions contained therein have been fulfilled, viz:

(a) the person desires to be heard in opposition to the application; and

(b) that person appears to the judge to be a proper person to be heard, notwithstanding that he has not been served with the cause papers in the matter.

[27] In the instant appeal, so long as the judge has demonstrated a proper exercise of discretion under O 53 r 8(1), on the basis of the facts and circumstances prevailing in each particular case, and established judicial principles, this court would be slow in embarking on an appellate interference.

[28] It is singularly significant that the second respondent was the recipient of the MOF approval which is now being challenged by way of judicial review. The second respondent is directly involved in the MOF approval and will be directly affected by the outcome of the judicial review proceedings. The second respondent clearly has a direct interest in the outcome of ASC's application for leave at the threshold stage, and so ought to be added as a party to the proceedings. In the context herein, justice and fairness dictate the necessary inclusion of the second respondent as a party to canvass their opposition on a subject matter directly affecting their interest (I am grateful to my learned brother *Syed Ahmad Helmy bin Syed Ahmad* for his input). Order 53 r 8(1) can therefore be invoked to allow the second respondent to appear as a proper party to oppose ASC's application at the leave stage. We are of the view that the learned High Court judge has correctly exercised the discretion under O 53 r 8(1). We are therefore unable to sustain the submission advanced for ASC.

CONCLUSION

[29] We answered the above question in the affirmative. We found no merit in this appeal which we dismissed accordingly. The High Court order was affirmed. We awarded costs of RM2,000 to the first respondent and RM20,000 to the second respondent. The deposit is to be paid the second respondent on account of the fixed costs.

Appeal dismissed.

Reported by Kanesh Sundrum